

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1073

Introduced by Mello, 5; Conrad, 46; McGill, 26.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to economic development; to amend sections
2 77-2715.07, 77-2717, and 77-2734.03, Reissue Revised
3 Statutes of Nebraska; to adopt the Building Nebraska's
4 Creative Economy Act; to provide a termination date; to
5 harmonize provisions; to provide an operative date; and
6 to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and
2 may be cited as the Building Nebraska's Creative Economy Act.

3 Sec. 2. The Legislature finds that film and television
4 production in Nebraska not only provides jobs for Nebraskans and
5 dollars for Nebraska businesses, but also enhances the state's
6 image nationwide. Recognizing that the high costs of film and
7 television production are driving such production to other states,
8 and that the industry is always seeking attractive locations that
9 can help cut the costs of production, the Legislature further finds
10 that the State of Nebraska, with the appropriate incentive, can
11 build on past success as an attractive site for film and television
12 production and that Nebraska is presently among several states with
13 minimal incentives to attract the film and television industry. It
14 is the intent of the Legislature that Nebraska provide an incentive
15 that will allow the state to compete with other states and increase
16 film and television production in this state.

17 Sec. 3. For purposes of the Building Nebraska's Creative
18 Economy Act:

19 (1) Crew means any person who works on preproduction,
20 principal photography, and postproduction, with the exception of
21 producers, principal cast, screenwriters, and the director. The
22 qualifying salaries of producers, principal cast, screenwriters,
23 and directors may be included as crew if the salaries are
24 paid to loan-out corporations or limited liability companies
25 registered to do business in this state or the salaries are

1 paid to Nebraska-based producers, principal cast, screenwriters,
2 or directors. The qualifying salaries of such producers, principal
3 cast, screenwriters, or directors shall not comprise more than
4 twenty-five percent of the total expenditures;

5 (2) Expenditure includes, but is not limited to:

6 (a) Wages or salaries of persons who are residents of
7 this state and who have earned income from working on a film,
8 television production, or television commercial in this state,
9 including payments to personal services corporations with respect
10 to the services of qualified performing artists, as determined
11 under section 62(a)(2)(A) of the Internal Revenue Code of 1986, as
12 amended;

13 (b) The cost of construction and operations, wardrobe,
14 accessories, and related services;

15 (c) The cost of photography, sound synchronization,
16 lighting, and related services;

17 (d) The cost of editing and related services;

18 (e) Rental of facilities and equipment; and

19 (f) Other direct costs of producing a film;

20 (3) Film means a professional single media or multimedia
21 program or feature, which is not child pornography or obscene
22 material, including, but not limited to, national advertising
23 messages that are broadcast on a national affiliate or cable
24 network, fixed on film, or digital video, which can be viewed
25 or reproduced and which is exhibited in theaters, licensed for

1 exhibition by individual television stations, groups of stations,
2 networks, cable television stations, or other means or licensed for
3 home viewing markets;

4 (4) Nebraska-based means a company or individual with a
5 Nebraska income tax requirement; and

6 (5) Production company means a person or company which
7 produces film, television shows, or commercials for exhibition in
8 theaters, on television, or elsewhere.

9 Sec. 4. (1) The Nebraska Film Enhancement Tax Credit
10 Program is created. An income tax credit in the amount of up to
11 seventeen percent of the documented expenditures made in Nebraska
12 which are directly attributable to the production of a film, a
13 television show, a commercial, or web-based or Internet-delivered
14 content in this state shall be allowed to the production company.

15 (2) The amount of the tax credit under subsection (1) of
16 this section shall be increased by an additional two percent of the
17 documented expenditures if the production company spends at least
18 twenty thousand dollars for the use of music created by a Nebraska
19 resident that is recorded in Nebraska or for the cost of recording
20 songs or music in Nebraska for use in the film, television show, or
21 commercial.

22 (3) The amount of the tax credit under subsection (1) of
23 this section shall be increased by an additional three percent
24 of the documented expenditures of the production company in
25 non-metropolitan areas of Nebraska.

1 (4) The program shall be administered by the Department
2 of Economic Development.

3 (5) To be eligible for a tax credit:

4 (a) The production company responsible for a film,
5 television show, or commercial made in this state shall submit
6 documentation to the department of the amount of wages paid for
7 employment in this state to residents of this state directly
8 relating to the production and the amount of other expenditures
9 incurred in this state directly relating to the production;

10 (b) The production company has filed or will file any
11 Nebraska tax return or tax document which may be required by law;

12 (c) Except for major studio productions, the production
13 company shall provide the name of the completion guarantor and a
14 copy of the bond guaranteeing the completion of the project or, if
15 a project has not secured a completion bond, the production company
16 shall provide evidence that all Nebraska crew and local vendors
17 have been paid and there are no liens against the production
18 company in the state;

19 (d) The minimum budget for the project shall be fifty
20 thousand dollars of which not less than twenty-five thousand
21 dollars shall be expended in this state;

22 (e) The production company shall provide evidence of
23 financing for production prior to the commencement of principal
24 photography; and

25 (f) The production company shall provide evidence of a

1 certificate of general liability insurance with a minimum coverage
2 of one million dollars and a worker's compensation policy.

3 (5) The department shall approve or disapprove all claims
4 for income tax credits and shall notify the Tax Commissioner of
5 such approval or disapproval. The amount of income tax credits
6 approved by the department for any fiscal year shall not exceed
7 five million dollars.

8 (6) Any income tax credit allowable to a partnership,
9 a limited liability company, a subchapter S corporation, a
10 cooperative, including a cooperative exempt under section 521
11 of the Internal Revenue Code of 1986, as amended, a limited
12 cooperative association, or an estate or trust may be distributed
13 to the partners, members, shareholders, patrons, or beneficiaries
14 in the same manner as income is distributed for use against their
15 income tax liabilities.

16 Sec. 5. The Building Nebraska's Creative Economy Act
17 terminates on July 1, 2016.

18 Sec. 6. Section 77-2715.07, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2715.07 (1) There shall be allowed to qualified
21 resident individuals as a nonrefundable credit against the income
22 tax imposed by the Nebraska Revenue Act of 1967:

23 (a) A credit equal to the federal credit allowed under
24 section 22 of the Internal Revenue Code; and

25 (b) A credit for taxes paid to another state as provided

1 in section 77-2730.

2 (2) There shall be allowed to qualified resident
3 individuals against the income tax imposed by the Nebraska Revenue
4 Act of 1967:

5 (a) For returns filed reporting federal adjusted
6 gross incomes of greater than twenty-nine thousand dollars, a
7 nonrefundable credit equal to twenty-five percent of the federal
8 credit allowed under section 21 of the Internal Revenue Code of
9 1986, as amended;

10 (b) For returns filed reporting federal adjusted gross
11 income of twenty-nine thousand dollars or less, a refundable credit
12 equal to a percentage of the federal credit allowable under section
13 21 of the Internal Revenue Code of 1986, as amended, whether or
14 not the federal credit was limited by the federal tax liability.
15 The percentage of the federal credit shall be one hundred percent
16 for incomes not greater than twenty-two thousand dollars, and
17 the percentage shall be reduced by ten percent for each one
18 thousand dollars, or fraction thereof, by which the reported
19 federal adjusted gross income exceeds twenty-two thousand dollars;

20 (c) A refundable credit as provided in section 77-5209.01
21 for individuals who qualify for an income tax credit as a qualified
22 beginning farmer or livestock producer under the Beginning Farmer
23 Tax Credit Act for all taxable years beginning or deemed to begin
24 on or after January 1, 2006, under the Internal Revenue Code of
25 1986, as amended;

1 (d) A refundable credit for individuals who qualify for
2 an income tax credit under the Nebraska Advantage Microenterprise
3 Tax Credit Act or the Nebraska Advantage Research and Development
4 Act; and

5 (e) A refundable credit equal to ten percent of the
6 federal credit allowed under section 32 of the Internal Revenue
7 Code of 1986, as amended.

8 (3) There shall be allowed to all individuals as a
9 nonrefundable credit against the income tax imposed by the Nebraska
10 Revenue Act of 1967:

11 (a) A credit for personal exemptions allowed under
12 section 77-2716.01;

13 (b) A credit for contributions to certified community
14 betterment programs as provided in the Community Development
15 Assistance Act. Each partner, each shareholder of an electing
16 subchapter S corporation, each beneficiary of an estate or trust,
17 or each member of a limited liability company shall report his or
18 her share of the credit in the same manner and proportion as he
19 or she reports the partnership, subchapter S corporation, estate,
20 trust, or limited liability company income; and

21 (c) A credit for investment in a biodiesel facility as
22 provided in section 77-27,236.

23 (4) There shall be allowed as a credit against the income
24 tax imposed by the Nebraska Revenue Act of 1967:

25 (a) A credit to all resident estates and trusts for taxes

1 paid to another state as provided in section 77-2730;

2 (b) A credit to all estates and trusts for contributions
3 to certified community betterment programs as provided in the
4 Community Development Assistance Act; and

5 (c) A refundable credit for individuals who qualify for
6 an income tax credit as an owner of agricultural assets under the
7 Beginning Farmer Tax Credit Act for all taxable years beginning
8 or deemed to begin on or after January 1, 2009, under the
9 Internal Revenue Code of 1986, as amended. The credit allowed
10 for each partner, shareholder, member, or beneficiary of a
11 partnership, corporation, limited liability company, or estate
12 or trust qualifying for an income tax credit as an owner of
13 agricultural assets under the Beginning Farmer Tax Credit Act
14 shall be equal to the partner's, shareholder's, member's, or
15 beneficiary's portion of the amount of tax credit distributed
16 pursuant to subsection (4) of section 77-5211.

17 (5)(a) For all taxable years beginning on or after
18 January 1, 2007, and before January 1, 2009, under the Internal
19 Revenue Code of 1986, as amended, there shall be allowed to each
20 partner, shareholder, member, or beneficiary of a partnership,
21 subchapter S corporation, limited liability company, or estate or
22 trust a nonrefundable credit against the income tax imposed by
23 the Nebraska Revenue Act of 1967 equal to fifty percent of the
24 partner's, shareholder's, member's, or beneficiary's portion of the
25 amount of franchise tax paid to the state under sections 77-3801 to

1 77-3807 by a financial institution.

2 (b) For all taxable years beginning on or after January
3 1, 2009, under the Internal Revenue Code of 1986, as amended,
4 there shall be allowed to each partner, shareholder, member, or
5 beneficiary of a partnership, subchapter S corporation, limited
6 liability company, or estate or trust a nonrefundable credit
7 against the income tax imposed by the Nebraska Revenue Act of 1967
8 equal to the partner's, shareholder's, member's, or beneficiary's
9 portion of the amount of franchise tax paid to the state under
10 sections 77-3801 to 77-3807 by a financial institution.

11 (c) Each partner, shareholder, member, or beneficiary
12 shall report his or her share of the credit in the same manner
13 and proportion as he or she reports the partnership, subchapter S
14 corporation, limited liability company, or estate or trust income.
15 If any partner, shareholder, member, or beneficiary cannot fully
16 utilize the credit for that year, the credit may not be carried
17 forward or back.

18 (6) There shall be allowed to individuals as a credit
19 against the income tax imposed by the Nebraska Revenue Act of 1967
20 a credit as provided in the Building Nebraska's Creative Economy
21 Act.

22 Sec. 7. Section 77-2717, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-2717 (1)(a) The tax imposed on all resident estates
25 and trusts shall be a percentage of the federal taxable income

1 of such estates and trusts as modified in section 77-2716, plus
2 a percentage of the federal alternative minimum tax and the
3 federal tax on premature or lump-sum distributions from qualified
4 retirement plans. The additional taxes shall be recomputed by (i)
5 substituting Nebraska taxable income for federal taxable income,
6 (ii) calculating what the federal alternative minimum tax would
7 be on Nebraska taxable income and adjusting such calculations for
8 any items which are reflected differently in the determination of
9 federal taxable income, and (iii) applying Nebraska rates to the
10 result. The federal credit for prior year minimum tax, after the
11 recomputations required by the Nebraska Revenue Act of 1967, and
12 the credits provided in the Nebraska Advantage Microenterprise Tax
13 Credit Act and the Nebraska Advantage Research and Development Act
14 shall be allowed as a reduction in the income tax due. A refundable
15 income tax credit shall be allowed for all resident estates and
16 trusts under the Nebraska Advantage Microenterprise Tax Credit Act
17 and the Nebraska Advantage Research and Development Act. An income
18 tax credit shall be allowed for all resident estates and trusts
19 under the Building Nebraska's Creative Economy Act.

20 (b) The tax imposed on all nonresident estates and trusts
21 shall be the portion of the tax imposed on resident estates and
22 trusts which is attributable to the income derived from sources
23 within this state. The tax which is attributable to income derived
24 from sources within this state shall be determined by multiplying
25 the liability to this state for a resident estate or trust with

1 the same total income by a fraction, the numerator of which is
2 the nonresident estate's or trust's Nebraska income as determined
3 by sections 77-2724 and 77-2725 and the denominator of which is
4 its total federal income after first adjusting each by the amounts
5 provided in section 77-2716. The federal credit for prior year
6 minimum tax, after the recomputations required by the Nebraska
7 Revenue Act of 1967, reduced by the percentage of the total income
8 which is attributable to income from sources outside this state,
9 and the credits provided in the Nebraska Advantage Microenterprise
10 Tax Credit Act and the Nebraska Advantage Research and Development
11 Act shall be allowed as a reduction in the income tax due. A
12 refundable income tax credit shall be allowed for all nonresident
13 estates and trusts under the Nebraska Advantage Microenterprise Tax
14 Credit Act and the Nebraska Advantage Research and Development Act.
15 An income tax credit shall be allowed for all nonresident estates
16 and trusts under the Building Nebraska's Creative Economy Act.

17 (2) In all instances wherein a fiduciary income tax
18 return is required under the provisions of the Internal Revenue
19 Code, a Nebraska fiduciary return shall be filed, except that a
20 fiduciary return shall not be required to be filed regarding a
21 simple trust if all of the trust's beneficiaries are residents of
22 the State of Nebraska, all of the trust's income is derived from
23 sources in this state, and the trust has no federal tax liability.
24 The fiduciary shall be responsible for making the return for the
25 estate or trust for which he or she acts, whether the income be

1 taxable to the estate or trust or to the beneficiaries thereof.
2 The fiduciary shall include in the return a statement of each
3 beneficiary's distributive share of net income when such income is
4 taxable to such beneficiaries.

5 (3) The beneficiaries of such estate or trust who are
6 residents of this state shall include in their income their
7 proportionate share of such estate's or trust's federal income and
8 shall reduce their Nebraska tax liability by their proportionate
9 share of the credits as provided in the Building Nebraska's
10 Creative Economy Act, the Nebraska Advantage Microenterprise Tax
11 Credit Act, and the Nebraska Advantage Research and Development
12 Act. There shall be allowed to a beneficiary a refundable income
13 tax credit under the Beginning Farmer Tax Credit Act for all
14 taxable years beginning or deemed to begin on or after January 1,
15 2001, under the Internal Revenue Code of 1986, as amended.

16 (4) If any beneficiary of such estate or trust is a
17 nonresident during any part of the estate's or trust's taxable
18 year, he or she shall file a Nebraska income tax return which shall
19 include (a) in Nebraska adjusted gross income that portion of the
20 estate's or trust's Nebraska income, as determined under sections
21 77-2724 and 77-2725, allocable to his or her interest in the estate
22 or trust and (b) a reduction of the Nebraska tax liability by
23 his or her proportionate share of the credits as provided in the
24 Building Nebraska's Creative Economy Act, the Nebraska Advantage
25 Microenterprise Tax Credit Act, and the Nebraska Advantage Research

1 and Development Act and shall execute and forward to the fiduciary,
2 on or before the original due date of the Nebraska fiduciary
3 return, an agreement which states that he or she will file a
4 Nebraska income tax return and pay income tax on all income derived
5 from or connected with sources in this state, and such agreement
6 shall be attached to the Nebraska fiduciary return for such taxable
7 year.

8 (5) In the absence of the nonresident beneficiary's
9 executed agreement being attached to the Nebraska fiduciary return,
10 the estate or trust shall remit a portion of such beneficiary's
11 income which was derived from or attributable to Nebraska sources
12 with its Nebraska return for the taxable year. The amount of
13 remittance, in such instance, shall be the highest individual
14 income tax rate determined under section 77-2715.02 multiplied by
15 the nonresident beneficiary's share of the estate or trust income
16 which was derived from or attributable to sources within this
17 state. The amount remitted shall be allowed as a credit against the
18 Nebraska income tax liability of the beneficiary.

19 (6) The Tax Commissioner may allow a nonresident
20 beneficiary to not file a Nebraska income tax return if the
21 nonresident beneficiary's only source of Nebraska income was his or
22 her share of the estate's or trust's income which was derived from
23 or attributable to sources within this state, the nonresident did
24 not file an agreement to file a Nebraska income tax return, and
25 the estate or trust has remitted the amount required by subsection

1 (5) of this section on behalf of such nonresident beneficiary. The
2 amount remitted shall be retained in satisfaction of the Nebraska
3 income tax liability of the nonresident beneficiary.

4 (7) For purposes of this section, unless the context
5 otherwise requires, simple trust shall mean any trust instrument
6 which (a) requires that all income shall be distributed currently
7 to the beneficiaries, (b) does not allow amounts to be paid,
8 permanently set aside, or used in the tax year for charitable
9 purposes, and (c) does not distribute amounts allocated in the
10 corpus of the trust. Any trust which does not qualify as a simple
11 trust shall be deemed a complex trust.

12 (8) For purposes of this section, any beneficiary of an
13 estate or trust that is a grantor trust of a nonresident shall be
14 disregarded and this section shall apply as though the nonresident
15 grantor was the beneficiary.

16 Sec. 8. Section 77-2734.03, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-2734.03 (1) (a) For taxable years commencing prior to
19 January 1, 1997, any (i) insurer paying a tax on premiums and
20 assessments pursuant to section 77-908 or 81-523, (ii) electric
21 cooperative organized under the Joint Public Power Authority Act,
22 or (iii) credit union shall be credited, in the computation of
23 the tax due under the Nebraska Revenue Act of 1967, with the
24 amount paid during the taxable year as taxes on such premiums and
25 assessments and taxes in lieu of intangible tax.

1 (b) For taxable years commencing on or after January 1,
2 1997, any insurer paying a tax on premiums and assessments pursuant
3 to section 77-908 or 81-523, any electric cooperative organized
4 under the Joint Public Power Authority Act, or any credit union
5 shall be credited, in the computation of the tax due under the
6 Nebraska Revenue Act of 1967, with the amount paid during the
7 taxable year as (i) taxes on such premiums and assessments included
8 as Nebraska premiums and assessments under section 77-2734.05 and
9 (ii) taxes in lieu of intangible tax.

10 (c) For taxable years commencing or deemed to commence
11 prior to, on, or after January 1, 1998, any insurer paying a tax on
12 premiums and assessments pursuant to section 77-908 or 81-523 shall
13 be credited, in the computation of the tax due under the Nebraska
14 Revenue Act of 1967, with the amount paid during the taxable year
15 as assessments allowed as an offset against premium and related
16 retaliatory tax liability pursuant to section 44-4233.

17 (2) There shall be allowed to corporate taxpayers a
18 tax credit for contributions to community betterment programs as
19 provided in the Community Development Assistance Act.

20 (3) There shall be allowed to corporate taxpayers a
21 refundable income tax credit under the Beginning Farmer Tax Credit
22 Act for all taxable years beginning or deemed to begin on or
23 after January 1, 2001, under the Internal Revenue Code of 1986, as
24 amended.

25 (4) The changes made to this section by Laws 2004, LB

1 983, apply to motor fuels purchased during any tax year ending
2 or deemed to end on or after January 1, 2005, under the Internal
3 Revenue Code of 1986, as amended.

4 (5) There shall be allowed to corporate taxpayers
5 refundable income tax credits under the Nebraska Advantage
6 Microenterprise Tax Credit Act and the Nebraska Advantage Research
7 and Development Act.

8 (6) There shall be allowed to corporate taxpayers a
9 nonrefundable income tax credit for investment in a biodiesel
10 facility as provided in section 77-27,236.

11 (7) There shall be allowed to corporate taxpayers an
12 income tax credit as provided in the Building Nebraska's Creative
13 Economy Act.

14 Sec. 9. This act becomes operative for all taxable years
15 beginning or deemed to begin on or after on January 1, 2010, under
16 the Internal Revenue Code of 1986, as amended.

17 Sec. 10. Original sections 77-2715.07, 77-2717, and
18 77-2734.03, Reissue Revised Statutes of Nebraska, are repealed.